

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

GREAT AMERICAN INSURANCE COMPANY OF NEW YORK **PLAINTIFF**

V. **CIVIL ACTION NO.1:06CV097 LTS-RHW**

LOWRY DEVELOPMENT, LLC **DEFENDANT**

CONSOLIDATED WITH

LOWRY DEVELOPMENT, LLC **PLAINTIFF**

V. **CIVIL ACTION NO. 1:06CV412 LTS-RHW**

**GREAT AMERICAN INSURANCE COMPANY
OF NEW YORK; GROVES & ASSOCIATES INSURANCE, INC.,
and CRUMP INSURANCE SERVICES OF MEMPHIS, INC.** **DEFENDANTS**

ORDER

The Court has before it the motions of Great American Insurance Company (Great American) to bifurcate the trial of this matter [241], to expedite consideration of the motion to bifurcate [242], and to enter a pre-trial scheduling order [244].

I have this day signed a Memorandum Opinion and entered an order resolving the parties' motions [114] [129] for summary adjudication of certain claims and defenses. The issue of mutual mistake remains to be tried, along with the issue of liability with respect to Lowry Development, LLC's (Lowry) claims against Groves & Associates Insurance, Inc., (Groves), and issues of damages. The rulings I have made on these motions [114] [129] may affect the parties' positions on bifurcation and trial procedure. Accordingly, I will resolve these motions [241] [244] at the pre-trial conference on November 14, 2007.

At the pre-trial conference, I will ask Lowry's representative to state the factual basis for Lowry's claim for extra-contractual damages against Groves and Great American. Having just considered Lowry's and Great American's motions [114] [129] concerning the merits of the coverage controversy, I have seen substantial evidence to support the idea that Great American was not acting in bad faith in asserting its defenses to Lowry's contract claim; and, while I have seen evidence that would support a finding of negligence on the part of Groves, I have seen no evidence that would support a finding of the kind of misconduct that would justify the imposition of punitive or other extra-contractual damages against Groves.

I express my current view of the evidence related to the issue of extra-contractual damages in order to allow Lowry's representatives to prepare to present a statement of Lowry's position at the pre-trial conference, and I do not intend to suggest to the parties that I have reached any conclusion on the merits of this part of Lowry's claim for damages.

I am also keeping an open mind on the question of bifurcation, but if extra-contractual damages is to be an issue in the damage phase of this trial, I do not believe that bifurcation will save much time or effort, in that the same evidence of the conduct of the parties' representatives that will be heard during the liability phase of the proposed bifurcated trial will have to be presented a second time in order to be considered by a second jury empaneled to decide the issue of damages.

Now that there has been a full and fair opportunity to conduct discovery on the issue of physical damage to the property at issue (Tuscan Villas Building Two), the parties should also consider whether they can now reach any stipulations concerning the extent of Lowry's actual damages.

Accordingly, it is hereby

ORDERED

That the motion of Great American to expedite consideration of the motion to bifurcate [242] is hereby **GRANTED**, and the motions of Great American Insurance Company to bifurcate the trial of this matter [241] and to enter a pre-trial scheduling order [244] will be considered and decided at the pre-trial conference on November 14, 2007.

SO ORDERED this 30th day of October, 2007.

s/ L. T. Senter, Jr.
L. T. SENTER, JR.
SENIOR JUDGE